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Supreme Court, U.S.
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No. 08-174

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IN THE

Supreme Court of the United States

JUDY WANG,

Petitioner,

v.

PRUDENTIAL FINANCIAL CORPORATION AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, D/B/A PRUDENTIAL INSURANCE COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by ruling on the first motion for summary judgment four weeks prior to the discovery deadline when the *pro se* plaintiff timely informed the district judge that additional discovery was needed to rebut the summary judgment motion?

2. Whether the district court erred by dismissing all of the *pro se* plaintiff's claims when the defendants' motions for summary judgment never addressed the *pro se* plaintiff's Equal Pay Act and state law conversion claims?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
REASON FOR GRANTING CERTIORARI	11
I. INTRODUCTION	11
II. STANDARDS OF REVIEW	12
III. THE DISTRICT COURT CLEARLY ABUSED ITS DISCRETION WHEN IT ADJUDICATED THE FIRST SUMMARY JUDGMENT PRIOR TO THE CONCLUSION OF DISCOVERY	13
IV. THE DISTRICT COURT FAILED TO FOLLOW BASIC SUMMARY JUDGMENT STANDARDS AS WELL AS TO LIBERALLY CONSTRUE THE *PRO SE* COMPLAINT; THUS, IT ERRONEOUSLY DISMISSED TWO CLAIMS NOT MADE THE SUBJECT OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT	15
CONCLUSION	21
APPENDIX A—Fifth Circuit Court of Appeals Opinion Entered February 26, 2008	1a

TABLE OF CONTENTS—Continued

Page

APPENDIX B—Memorandum Order on First Summary Judgment Signed December 13, 2006 ..... 3a

APPENDIX C—Memorandum Order on Second Summary Judgment Signed April 20, 2007.... 19a

APPENDIX D—District Court Order Granting Plaintiff's Motion to Amend Her Pleadings Signed September 12, 2006 ..... 27a

APPENDIX E—District Court Order granting One-Week Extension Signed November 2, 2006 ..... 28a

APPENDIX F—Fifth Circuit Order on Petition for Rehearing and Rehearing En Banc Entered May 14, 2008..... 30a

APPENDIX G—District Court's Order Denying Plaintiff's Motion for Reconsideration Signed January 5, 2007 ..... 32a

APPENDIX H—Final Judgment Entered April 20, 2007 ..... 33a

APPENDIX I—Second Amended Complaint Filed September 15, 2006 ..... 35a

APPENDIX J—Plaintiff's Motion to Amend Her Pleadings Filed September 8, 2006..... 39a

APPENDIX K—Plaintiff's Motion to Extend Time for a Week Filed November 1, 2006..... 42a

TABLE OF AUTHORITIES

CASES — Page

Supreme Court Cases:

Bell Atl. Corp. v. Twombly, ___ U.S.___, 127 S. Ct. 1955 (2007) 16

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986) 12

Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957) 16

Erickson v. Pardus, ___ U.S. ___, 127 S. Ct. 2197 (2007) (per curiam) 12, 15, 16

Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972) (per curiam) 12

Matsushita Elec. Indus. Co. v Zenith Radio Corp., 475 U.S. 574, 106 S. Ct. 1348 (1986) 12, 21

Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S. Ct. 992 (2002) 16

Courts of Appeals Cases:

Adams v. Travelers Indem. Co., 465 F.3d 156 (5th Cir. 2006) 21

Baker v. Am. Airlines, Inc., 430 F.3d 750 (5th. Cir. 2005) 12

Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986) 13

Hodgson v. Behrens Drug Co., 475 F.2d 1041 (5th Cir.), *cert. denied*, 414 U.S. 822, 94 S. Ct. 121 (1973) 20

International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257 (5th Cir. 1991), *cert. denied*, 502 U.S. 1059, 112 S. Ct. 936 (1992) 14

Jones v. Greninger, 188 F.3d 322 (5th Cir. 1999) (per curiam) 16

TABLE OF AUTHORITIES—Continued

Page

Littlejohn v. Shell Oil Co., 483 F.2d 1140 (5th Cir.) (en banc), *cert. denied*, 414 U.S. 1116, 94 S. Ct. 849 (1973) 13
Marshall v. Victoria Transp. Co., 603 F.2d 1122 (5th Cir. 1979) 12
SEC v. Spence & Green Chem. Co., 612 F.2d 896 (5th Cir. 1980), *cert. denied*, 449 U.S. 1082, 101 S. Ct. 866 (1981) 13
Wichita Falls Office Assoc. v. Banc One Corp., 978 F.2d 915 (5th Cir. 1992), *cert. denied*, 508 U.S. 910, 113 S. Ct. 2340 (1993) 12, 13, 14, 15

Texas State Court Cases:

Millan v. Dan Witter Reynolds, Inc., 90 S.W.3d 760, 764 (Tex.App.—San Antonio 2002, pet denied) 20
Ojeda v. Wal-Mart Stores, 956 S.W.2d 704, 707 (Tex. App. San Antonio 1997, pet denied) 18
Staats v. Miller, 240 S.W.2d 342, 344 (Tex.App.—Amarillo 1951), *rev'd on other grounds*, 243 S.W.2d 686 (Tex. 1951) 17

STATUTES

Federal:

29 U.S.C. § 206(d) 8, 18
29 U.S.C. § 255(a) 20
29 U.S.C. §§ 621 *et. seq.* 5
42 U.S.C. § 1981 5
42 U.S.C. § 2000e *et.seq.* 7
42 U.S.C. § 2000e-5 20

TABLE OF AUTHORITIES—Continued

STATUTES — Page

State:

Texas Civ. Prac. Rem. Code § 16.003(a) 20
Texas Labor Code § 21 *et seq.* 5

RULES

Fed. R. Civ. P. 8(a) 15
Fed. R. Civ. P. 12(b)(6) 16
Fed. R. Civ. P. 12(e) 16, 18
Fed. R. Civ. P. 56(c) 12, 21
Fed. R. Civ. P. 56(f) 13

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OPINIONS BELOW

None of the opinions in this case are published. The Court of Appeals' *per curiam* opinion whose review is sought is reproduced in the Appendix at 1a. The District Court's two memorandum opinions and final judgment are reproduced in the Appendix at 3a, 19a, and 33a, respectively.

JURISDICTION

Jurisdiction is proper in this Court. The final judgment sought to be reviewed was entered by the United States District Court for the Northern District of Texas on April 20, 2007. Pet App. 33a-34a.

The Fifth Circuit Court of Appeals affirmed the district court's judgment with a *per curiam* decision entered on February 26, 2008. Pet. App. 1a-2a. Ms. Wang filed a Petition for Rehearing En Banc, which was denied on May 14, 2008. Pet. App. 30a. The petition was also considered as a Petition for Panel Rehearing, which was similarly denied on May 14, 2008. *Id.*

The present Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Panel Rehearing by the Fifth Circuit Court of Appeals and is timely pursuant to 28 U.S.C. §§ 1254(1); 2101(c) and Rules 13.1 & 13.3 of the Rules of the Supreme Court of the United States.

STATUTES INVOLVED

Rule 8(a) of the Federal Rules of Civil Procedure states:

> Rule 8. General Rules of Pleading
>
> (a) Claims for Relief.
>
> A pleading that states a claim for relief must contain:
>
> (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
>
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
>
> (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 8(a)

Rule 56(f) of the Federal Rules of Civil Procedure states:

> Rule 56. Summary Judgment
>
> . . .
>
> (f) When Affidavits Are Unavailable.
>
> If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) deny the motion;
>
> (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
>
> (3) issue any other just order.

Fed. R. Civ. P. 56(f)

STATEMENT OF THE CASE

This is a discrimination and wrongful termination case decided on two motions for summary judgment in favor of the Respondent employers. Petitioner employee, Judy Wang, respectfully prays that a Writ of Certiorari be granted to review the decisions of the United States District Court for the Northern District of Texas ("district court") and the affirmation of same by the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit").

Ms. Wang's Employment

Ms. Wang is a very intelligent, extremely hard-working, over 50-years-old, Taiwanese-American female who also has a limited English proficiency ("LEP"). Ms. Wang suffered a pattern and practice of blatant gender-, age-, race-, and national origin-based

discrimination by her supervisor Richard Treta[1] and others throughout her five-year employment as an insurance and securities agent for Respondents Prudential Financial Corporation and Prudential Insurance Company of America (collectively, "Prudential"). Specifically, Ms. Wang was denied training and other employment benefits given to younger and Caucasian agents. She was also not permitted to place advertisements with her picture when other, younger agents were permitted to do so.

In October 2004, Ms. Wang was suddenly terminated. This petite, graying lady was immediately escorted out of the building by not one, but two armed security guards. She was not permitted to take her personal possessions from her office, including her address book, client list, and prospective client list. Further, she was not allowed to exercise her vested stock options, and Prudential later claimed this failure prevented her from being compensated for the options. It took three weeks for any of her personal items to be returned. Some very valuable items have never been returned, including both client lists. In fact, her personal client list information was subsequently used by Treta and others in the office to inflate their own sales figures, and thus their commission income. Even some commissions she earned before her termination were ignored or miscalculated and have not been paid to this day.

Prudential has consistently offered only one reason for Ms. Wang's termination: she sold an insurance policy to a very close family friend that named Ms.

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[1] Initially, Richard Treta was a defendant below, but was dismissed from the suit. He was not an appellee at the Fifth Circuit nor is he a Respondent in this Honorable Court.

Wang's son as one of the beneficiaries in violation of Prudential's policies. While true on its face, this was a mere pretext for her termination. The investigation into the issue was completed four months prior to her termination and, it is Ms. Wang's understanding, that the investigating compliance department recommended that Ms. Wang's employment not be terminated. Nevertheless, Treta continued his discriminatory conduct toward Ms. Wang and terminated her contrary to the recommendation.

Ms. Wang's Complaint

After timely filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") and obtaining a right to sue letter, Ms. Wang hired an attorney. Suit was brought in federal district court in the Northern District of Texas. Her counsel's first amended complaint alleged age, national origin, race, and retaliation discrimination pursuant to the ADEA[2], Section 1981[3], state discrimination claims[4], and some other state common law torts. But, after eleven months of inactivity on his part, Ms. Wang's attorney withdrew in a less-than-professional manner right before the amended pleading deadline.

Because her trust in attorneys was shaken, Ms. Wang elected to proceed *pro se* despite her LEP. Ms. Wang timely filed a motion requesting leave to amend her pleadings that was unopposed by Respondents. Pet. App. 39a. This motion explained

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[2] The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 *et. seq.*

[3] 42 U.S.C. §1981.

[4] Texas Labor Code § 21 et seq. (the state version of Title VII).

that her second amended complaint included claims her prior counsel had omitted. *Id.* at 40a. The district court granted the motion and allowed Ms. Wang's amended pleadings. Pet. App. 27a.

Ms. Wang's *pro se* Amended Complaint asserted, among other things, that Respondents' actions were "in violation of her rights to be free from hostile working environment, age, sex, and/or race discrimination." Pet. App. 36a. Ms. Wang also alleged that Respondents "wrongfully [took] Plaintiff's valuable personal property to Plaintiff's damage," and she alleged claims based on Respondents' "refus[al] to pay her earnings, entitlements, benefits, commissions, stock options," and other compensation-related benefits. *Id.*

Respondents filed an amended answer and a Rule 12(b)(6) Partial Motion to Dismiss for Failure to State a Claim.[5] Respondents, however, never filed a motion for a more definitive statement to clarify what claims Ms. Wang had added to her previously asserted Section 1981, ADEA, and state discrimination claims.

First Summary Judgment

On October 11, 2006, more than three months before the conclusion of the discovery period and four months before the deadline for dispositive motions, Respondents filed their first Motion for Summary Judgment. In this motion, Respondents moved to dismiss Ms. Wang claims for Section 1981 and ADEA and "assumed" she was asserting sex discrimination

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[5] The Motion to Dismiss was directed at a non-existent state law claim and Ms. Wang's claims against her supervisor, Treta, personally. The granting of that motion and dismissal of those claims is not part of Ms. Wang's petition to this Honorable Court.

based solely under Title VII.[6] *See* Pet. App. 7a, n.2. Furthermore, Respondents' motion totally ignored Ms. Wang's conversion claim (the "wrongfully taking Plaintiff's valuable property" language of her Complaint).

Ms. Wang timely filed a motion requesting more time to respond to the summary judgment. Pet. App. 42a. Among other reasons, this motion pointed out that (1) Respondents moved for summary judgment "far away" before the dispositive motion deadline, (2) "there is plenty of time for the completion of the Discovery findings", (3) English is Ms. Wang's second language and she needs "additional time for reasonable accommodation," (4) Respondents had failed to produce certain specific discovery items to her, (5) her prior attorney was withholding some of her "original documents of evidence," and, most importantly, (6) the "EEOC has lost Plaintiff's files and is still looking for" various specific items, including "the Charges of Sexual Harassment, Race, Age, and Compensation Discrimination, also Hostile working Environment, etc. Plaintiff did not receive a 'New Determination Letter' after the new additional charges." *Id.* 42a-45a.

Despite these numerous difficulties, Ms. Wang requested only a week's extension, which the district court granted. Pet. App. 28a. Then, in Ms. Wang's response to the Respondents' motion for summary judgment, she again pointed out in the Arguments and Authorities section that the EEOC still had not found her file. Failure to exhaust administrative remedies was a key component of Respondents' summary judgment motion. *See* Pet. App. 11a. Rather than grant Ms. Wang another extension, or to

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[6] 42 U.S.C. §2000e *et. seq.*

postpone ruling on the summary judgment motion until the EEOC file could be located, the district court prematurely adjudicated the motion and dismissed the ADEA, Section 1981, and Title VII based claims. Pet. App. 3a.

Additionally, Ms. Wang's summary judgment response specifically mentioned under the "Statutes Relied Upon" section, that she was relying on the Equal Pay Act ("EPA").[7] In the "Arguments and Authorities" section of her brief, she argued that the EPA

> requires that men and women be given equal pay for equal work in the same establishment. . . . Specifically, the EPA provides: Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment.

Apparently, the district court understood this assertion by Ms. Wang because, although it prematurely granted summary judgment on the ADEA, Section 1981, and Title VII claims, the district court did not rule on her EPA claim and also determined that Ms. Wang's "compensation-based" claims survived Respondents' first motion for summary judgment. Pet. App. 18a. Importantly, the district court's memorandum opinion did not address, much less dismiss, Ms. Wang's conversion claim.

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[7] 29 U.S.C. § 206(d).

Second Motion for Summary Judgment

After Respondents took Ms. Wang's deposition, they again moved for summary judgment purportedly on all remaining claims. However, Respondents continued to attack these claims in the context of a Title VII action only; asserting as the basis for their summary judgment that each of the compensation items at issue occurred more than 300 days prior to the date Ms. Wang filed her Charge with the EEOC. *See* Pet. App. 23a. The statute of limitations for an EPA claim, however, is two years for a normal violation and three years for a willful violation. Moreover, an EPA violation does not even require a charge be filed with the EEOC. Similarly, the state law conversion claim's statute of limitations is two years and it does not require a charge be filed with the EEOC either. Thus, the Respondents entire second summary judgment motion failed to attack the basis for Ms. Wang's remaining claims.

Inexplicably, this time the district court ignored Ms. Wang's previous assertion of her EPA claims and the plainly worded conversion claim when it erroneously granted Respondents' motion; thereby dismissing all of Ms. Wang's claims. Pet. App. 26a & 33a. In effect, the district court strictly construed, rather than liberally construed, Ms. Wang's *pro se* second amended complaint. Moreover, the court ignored Ms. Wang's previously clear statement that she was expanding the claims her lawyer filed and her clearer statement that she was bringing an EPA claim for discrimination as well.

As a result, a final judgment was entered dismissing all of Ms. Wang's claims, despite at least two claims never being the subject of a motion for summary judgment. *See* Pet. App. 33a. Ms. Wang's

constitutional right to a jury trial, therefore, was denied her.

Appeal to the Fifth Circuit

Ms. Wang timely filed two *pro se* notices of appeal to the Fifth Circuit. In her Appellant's brief in the Issues Presented section, Issue No. 4 stated "Whether the district court . . . erred in dismissing the compensation-based claims . . . but were actually 'related' to the discrimination-based claims." And then she pointed out these claims were the result of discrimination by age, sex, race and the "Equal Pay Act." Her argument discussing the compensation-based claims stated, "Section 1981 was left out and should also be including [sic] EPA and Harassment." She also pointed out the limitations period was two or three years depending on willfulness and that there are no administrative hurdles to an EPA claim before filing suit.

In her reply brief, in "Issue 6," she questioned whether dismissal was proper before the discovery deadline was due. Likewise, "Issue IX [sic]" in the argument section stated "District Court erred in granting early Initial summary judgment motion on 12/13/2006 prior to discovery 1/16/2006." Her argument under this point stated, "Because of the requirement that the nonmoving party be permitted to conduct necessary discovery, summary judgment is often considered inappropriate early in a case." Thus, both arguments presented in this Honorable Court were not waived below by the *pro se* appellant.

Nevertheless, in a one sentence *per curiam* opinion, the Fifth Circuit affirmed the district court's erroneous actions. Ms. Wang's *pro se* Petitions for Rehearing En Banc and to the Panel were subsequently denied.

REASONS FOR GRANTING CERTIORARI

Petitioner submits the following in support of her Petition for Writ of Certiorari to review the decision of the Fifth Circuit affirming the district court, which erroneously granted Respondents' two motions for summary judgment and dismissed all claims.

I. INTRODUCTION

The district court abused its discretion by granting Respondents' first motion for summary judgment an entire month before the discovery period ended rather than liberally construe the *pro se* Petitioner's summary judgment response as a *de facto* Rule 56(f) motion. Thus, the district court egregiously failed to either delay its ruling on the motion or grant a continuance so that discovery could be completed.

Additionally, contrary to well-settled summary judgment standards, the district court improperly dismissed two of the *pro se* plaintiff's claims that were never made part of the Respondents' motions for summary judgment. This egregious failure is made more heinous because in doing so, the district court ignored more than thirty years of this Court's precepts requiring a court to liberally construe, rather than strictly construe, a *pro se* plaintiff's complaint.

Because the district court, and the Fifth Circuit in sanctioning such action, has so far departed from the accepted and usual course of judicial proceedings, this Honorable Court should exercise its supervisory power and correct these errors.

For these reasons, this Petition for Writ of Certiorari should be granted.

II. STANDARDS OF REVIEW

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25, 106 S. Ct. 2548 (1986). All evidence and the inferences to be drawn therefrom must be viewed in the light most favorable to the party opposing the motion. *Marshall v. Victoria Transp. Co.*, 603 F.2d 1122, 1123 (5th Cir. 1979). Once the moving party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348 (1986).

A district court's decision to end discovery and rule on a motion for summary judgment is reviewed with an abuse of discretion standard. *Baker v. Am. Airlines, Inc.*, 430 F.3d 750, 753 (5th. Cir. 2005); *Wichita Falls Office Assoc. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1992), *cert. denied*, 508 U.S. 910, 113 S. Ct. 2340 (1993).

A document filed *pro se* is "to be liberally construed" and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, ___ U.S. ___, 127 S. Ct. 2197, 2200 (2007) (internal citations omitted) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972) (per curiam).

III. THE DISTRICT COURT CLEARLY ABUSED ITS DISCRETION WHEN IT ADJUDICATED THE FIRST SUMMARY JUDGMENT PRIOR TO THE CONCLUSION OF DISCOVERY.

Rule 56(f) is the mechanism for a summary judgment opponent to obtain an extension to conduct more discovery. *See* Fed. R. Civ. P. 56(f). In this case, the *pro se* plaintiff's summary judgment response served as a functional equivalent of a Rule 56(f) motion.

The purpose of Rule 56(f) is to provide non-movants with a tool to keep open the doors of discovery in order to adequately respond to a summary judgment motion. *Wichita Falls Office Assocs.*, 978 F.2d at 919 (quoting *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (citing *Littlejohn v. Shell Oil Co.*, 483 F.2d 1140, 1146 (5th Cir.) (en banc), *cert. denied*, 414 U.S. 1116, 94 S. Ct. 849 (1973)). The decision whether to grant a continuance under Rule 56(f) rests in the sound discretion of the trial court. *SEC v. Spence & Green Chem. Co.*, 612 F.2d 896, 901 (5th Cir. 1980), *cert. denied*, 449 U.S. 1082, 101 S. Ct. 866 (1981).

As the Fifth Circuit has stated,

> Although it is preferred that non-movants present an affidavit to support a continuance of discovery, there is no stringent procedure that will bar litigants access to further discovery. In order to trigger the rule non-movants need only submit an "equivalent statement preferably in writing" that conveys the need for additional discovery.

Wichita Falls Office Assocs., 978 F.2d at 919. The continuance of a motion for summary judgment for

purposes of discovery should be granted almost as a matter of course unless the non-moving party has not diligently pursued discovery. *Id.* at 919 n.4 (emphasis supplied).

The non-movant must establish the following three general requirements for a continuance of discovery. The non-movant must (1) request extended discovery prior to the court's ruling on summary judgment, (2) put the trial court on notice that further discovery pertaining to the summary judgment motion is being sought, and (3) demonstrate to the trial court specifically how the requested discovery pertains to the pending motion. *Id.* at 919 (citing *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1268 (5th Cir. 1991), *cert. denied*, 502 U.S. 1059, 112 S. Ct. 936 (1992)). Additionally, the non-movant must not have caused his own predicament by not diligently pursuing relevant discovery. *Id.*

Ms. Wang met all of these requirements in her motion for a one-week continuance, which the trial court granted. Pet. App. 42a; 28a. In her summary judgment response, she met those requirements again. Nevertheless, the trial court failed to grant her a more substantive continuance this second time.

In "Section II" of her summary judgment response, entitled, "Plaintiff has had [sic] exhausted the Administrative remedies with the EEOC," Ms. Wang stated again that the "EEOC is still looking FOR THE PALINTIFF'S [sic] FILE." She went on to point out that if she had the file, she could show that "[t]he contents included the charges of Sexual Harassment, Race, Age, and Compensation Discrimination, also Hostile working Environment, etc." Obviously, under Fifth Circuit precedent, this wording in a *pro se* motion satisfies the Rule 56(f). *See Wichita Falls*

Office Assocs., 978 F.2d at 919. Especially when this Honorable Court has mandated that a *pro se* litigant's filings be liberally construed and not held to the same level of competence as an attorney's filings. *See Erickson*, ___ U.S. at ___, 127 S.Ct. at 2200.

Because such a motion "should be granted almost as a matter of course," *Wichita Falls Office Assocs.*, 978 F.2d at 919, the district court clearly abused its discretion in not affording Ms. Wang more time for discovery; especially to obtain the very EEOC charges that would rebut the Respondents ultimate persuasive argument that Ms. Wang had failed to exhaust her administrative remedies. *See* Pet. App. 23a-24a. Similarly, the Fifth Circuit erred in affirming the district court's judgment and abandoning its own precedent on this issue.

Ms. Wang's Petition for Writ of Certiorari should be granted to correct this egregious error.

IV. THE DISTRICT COURT FAILED TO FOLLOW BASIC SUMMARY JUDGMENT STANDARDS AS WELL AS TO LIBERALLY CONSTRUE THE *PRO SE* COMPLAINT; THUS, IT ERRONEOUSLY DISMISSED TWO CAUSES OF ACTION NOT MADE THE SUBJECT OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT.

Second Amended Complaint

Federal Rule of Civil Procedure 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of this requirement is to "give the defendant fair notice of what the . . . claim is and the grounds upon which it

rests." *Bell Atl. Corp. v. Twombly*, ___ U.S.___, 127 S. Ct. 1955, 1964 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99 (1957)). A plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face." *Id.* at 1974.

The standard of notice pleading operates in conjunction with liberal discovery rules and summary judgment motions to ascertain genuine factual disputes and viable legal theories. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S. Ct. 992 (2002). Where a pleading does not suffice to give a defendant proper notice of claims asserted against him, he may move for dismissal pursuant to Rule 12(b)(6) or for a more definite statement pursuant to Rule 12(e). *Id.* at 514.

When construing a complaint, the Court must "accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999) (per curiam). A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 127 S. Ct. at 1974. Importantly, a *pro se* litigant's complaint must be liberally construed, and will be held to less stringent standards than pleadings drafted by lawyers. *Erickson*, ___ U.S. at ___, 127 S. Ct. at 2200.

In her second amended complaint, Ms. Wang, a *pro se* plaintiff, stated her claims, in part, as follows:

> [F]urther, Defendant's action in terminating Plaintiff not only was a breach of contract to Plaintiff's damage but was also done in violation of good faith and fair dealing and in a malicious manner with apparent intent to humiliate her and embarrass Plaintiff, wrongfully taking

> Plaintiff's valuable personal property to Plaintiff's damage, and in violation of her rights to be free from hostile working environment, age, sex, and/or race discrimination, for which Plaintiff also seeks exemplary damages against Defendant, further Defendant has failed and refused to pay Plaintiff her earnings, entitlements, benefits, commissions, stock options, 401K 4% contribution plan, health, dental and life insurance, and education assistance programs, continuing, new and review business commissions, loss of pending potential, [sic] million-dollar insurance contracts;, annuities, "401K roll-over" business, and earned bonuses, and home, life, property and casualty, "group benefit program and ESOP benefit project and 1200 business leads and 2-weeks of pending appointments, to which Plaintiff is and was then rightly and justly entitled to benefit from, all to Plaintiff's damage . . . .

Pet. App. 36a. (Emphasis supplied.) As the underlined portions indicate, on the face of her pleadings, Ms. Wang alleged claims for (1) breach of contract, (2) good faith and fair dealing, (3) conversion, (4) age discrimination, (5) gender discrimination, and (6) race discrimination. (The exact legal basis for the discrimination claims is uncertain.) There is also a long set of what the district court later called "compensation-based" claims.

Conversion Claim

In Texas, a conversion claim can arise when property is taken from the plaintiff wrongfully. *Staats v. Miller*, 240 S.W.2d 342, 344 (Tex.App.—Amarillo 1951), *rev'd on other grounds*, 243 S.W.2d 686 (Tex. 1951). The elements of such a claims are (1) plaintiff owned, possessed, or had the right to

immediate possession of property, (2) the property was personal property, (3) the defendant wrongfully exercised dominion or control over the property, and (4) plaintiff suffered damages. *See Ojeda v. Wal-Mart Stores*, 956 S.W.2d 704, 707 (Tex. App. San Antonio 1997, pet denied). Clearly Ms. Wang's *pro se* allegation that Respondents "wrongfully [took] Plaintiff's valuable personal property to Plaintiff's damage" suffices to state a common law conversion claim in Texas.

Equal Pay Act Claim

Respondents never filed a Rule 12(e) motion for more definitive statement regarding Ms. Wang's discrimination claims. *See* Fed. R. Civ. P. 12(e). Instead, they moved for summary judgment and again incorrectly "assumed" her gender-based discrimination claims were Title VII-based. Pet. App. 21a-22a. Part of their summary judgment evidence were quotations from Ms. Wang's deposition, where she testified that the compensation claims were based on discrimination by Respondents.[8] Respondents, however, never asked Ms. Wang whether Title VII was the basis of her complaint on these items. Indeed, they never asked her the legal basis for any of her remaining claims.

Prior to her deposition, in her response to the first summary judgment motion, Ms. Wang informed Respondents and the district court that her sex discrimination claim was based on the Equal Pay Act, which prohibits sex-based pay discrimination.[9] This

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[8] The relevant passage is quoted by the district court in its memorandum opinion. Pet. App. 21a.

[9] The Equal Pay Act, article 29 U.S.C. § 206(d) is entitled, "Prohibition of sex discrimination."

is not only entirely consistent with the history of the case, but more logical than Respondents' Title VII assumption.

Ms. Wang's original counsel filed claims for Title VII, but those were dismissed with prejudice on Rule 12(b)(6) grounds. Her counsel's amended complaint neither asserted any Title VII claims nor, importantly, an EPA or conversion claim. After becoming *pro se*, Ms. Wang filed a motion to amend her pleading, which was unopposed by Respondents and granted by the district court. Pet. App. 39a; 27a. Her motion stated that her previous counsel "failed to properly state Plaintiff's full complaint." *Id.* at 39a.

Clearly, Ms. Wang's request to expand her pleadings, her *pro se* second amended complaint, and her first summary judgment response were sufficient to put the Respondents and the district court on notice of her EPA claim. Further, if Respondents were confused as to the basis of Ms. Wang's claims, the proper procedure is to file a Rule 12(e) motion or depose her regarding her legal basis. Respondents did neither.

Second Summary Judgment

Despite Ms. Wang's statements and clarifications, both the Respondents and the district court "assumed" Title VII was the basis for the remainder of Ms. Wang's claims. Pet. App. 21a-22a. In its memorandum opinion, the district court went so far as to erroneously analyze all the compensation-based claims and, presumably, the conversion claim under the Title VII rubric. Pet. App. 23a-25a.The district court concluded that Ms. Wang was barred from recovering for all specified compensation items be-

cause each one occurred more than 300 days prior to Ms. Wang filing her EEOC charge. *Id.*

However, the EPA, as part of the Fair Labor Standards Act, does not require exhaustion of administrative remedies like Title VII does. *Cf.* 42 U.S.C. §2000e-5 (Title VII provisions). Moreover, the statute of limitations for an EPA claim is two years, not 300 days, and is even extended to three years for a willful violation. *See* 29 U.S.C. §255(a). A common law conversion claim in Texas also has a two-year statute of limitation. Tex. Civ. Prac. & Rem. Code §16.003(a); *Millan v. Dan Witter Reynolds, Inc.*, 90 S.W.3d 760, 764 (Tex.App.—San Antonio 2002, pet denied).

Further, Ms. Wang was terminated in October 2004 and filed her second amended complaint on September 15, 2006; thus, all of her termination-related compensation claims occurred well within two years of her bringing suit. And, some, if not all, of her EPA claims occurred within three years of her bringing suit. "Sex-based, discriminatory wage payment violations constitute a continuing violation of the EPA;" thus, the relation-back doctrine applies. *Hodgson v. Behrens Drug Co.*, 475 F.2d 1041, 1050 (5th Cir. 1973), *cert. denied*, 414 U.S. 822, 94 S. Ct. 121 (1973). Accordingly, none of Ms. Wang's EPA claims are susceptible to a limitations defense, much less the 300 day rule applied by the district court. Finally, because the unlawful conversion occurred on the date of her termination and afterward, the conversion claim is not time-barred either.

In essence, the district court's improper granting of summary judgment on the conversion and EPA claims occurred because Respondents failed to meet their summary judgment burden. *See* Fed. R. Civ. P.

56. Neither motion for summary judgment addressed the EPA or conversion claims. It is well-settled that "once the moving party has made an initial showing," the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita*, 475 U.S. at 586. However, Respondents failed to make the first showing on these two claims. Accordingly, under the rule, they were not entitled to judgment as a matter of law. *See, e.g., Adams v. Travelers Indem. Co.*, 465 F.3d 156, 161 (5th Cir. 2006) (reversing movant-defendant's motion for summary judgment, even when plaintiff filed no response, because movant failed to meet its burden under Rule 56).

The district court's error in basic summary judgment procedure is so egregious, that this Honorable Court should grant Petitioner's Application for Writ of Certiorari and restore Ms. Wang's two claims wrongfully denied her by the district court's error.

CONCLUSION

The district court clearly abused its discretion by not granting petitioner's *de facto* Rule 56 (f) motion, which resulted in the erroneous granting of the Respondents' first summary judgment. Also, viewing the evidence in the light most favorable to the Petitioner, questions of material fact exist concerning the conversion and Equal Pay Act claims asserted in the *pro se* complaint that were erroneously dismissed in the second summary judgment.

Moreover, the district court in both of its summary judgments, and the Fifth Circuit in its *per curiam* approval thereof, has flaunted the longstanding precedent of this Honorable Court that requires lower

courts to liberally construe a complaint and the other filings of a *pro se* plaintiff.

Because the district court, and the Fifth Circuit in sanctioning such action, has so far departed from the accepted and usual course of judicial proceedings, this Honorable Court should exercise its supervisory power and correct these egregious errors by granting Petitioner's Application for Writ of Certiorari.

Respectfully submitted,

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August 11, 2008

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed February 26, 2008]

No. 07-10534
Summary Calendar

JUDY WANG,
Plaintiff-Appellant,

v.

PRUDENTIAL FINANCIAL CORPORATION; PRUDENTIAL INSURANCE COMPANY OF AMERICA, doing business as Prudential Insurance Company; RICHARD TRETA,
Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Texas USDC
No. 3:05-CV-02091

Before HIGGINBOTHAM, STEWART, and ELROD, *Circuit Judges.* PER CURIAM:

Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent, except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Having reviewed the district courts' decisions,[1] the parties' briefs, and the record on appeal, we find no reversible error and accordingly AFFIRM.

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[1] *See Judy Wong u. Prudential Fin. Corp.*, No. 3:05-CV-0891, 2007 WL 1186556 (N.D. Tex. Apr. 20, 2007); *Judy Wong v. Prudential Fin. Corp.*, No. 3:05-CV-0891, 2006 WL, 3702642 (N.D. Tex. Dec. 13, 2006); *Judy Wang v. Prudential Fin. Corp.*, No. 3:05-CV-0891, 2006 WL 1489427 (N.D. Tex. May 25, 2006).

APPENDIX B

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3:05-CV-2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a PRUDENTIAL INSURANCE COMPANY, AND RICHARD TRETA,

Defendants.

MEMORANDUM ORDER

Before the Court is Defendants' Motion for Summary Judgment (doc. 68), and Defendants' Rule 12 (b) (6) Partial Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted (doc. 67). The Court GRANTS both motions for the reasons stated below.

I. Factual and Procedural Background

Plaintiff Judy Wang is an Asian female over age 50. (*See* May 25, 2006 Memorandum Order at 1). Defendants Prudential Financial Corporation and Prudential Insurance Company of America d/b/a Prudential Insurance Company (collectively, "Prudential") employed Wang as a statutory insurance agent until her employment was terminated in October 2004. (App. in Supp. Defs.' Mot. Summ. J. ["Defs. App."] at 2). In December 2003, Wang entered into a "Statutory Agent Agreement" (the "Agree-

ment") with Prudential, pursuant to which she was appointed an agent of the company able to provide investment advisory services and to solicit applications for various financial services and insurance products issued or marketed by Prudential. *(Id.* at 2, 5). The Agreement specified that nothing contained in the Agreement was intended to create a contract of employment for any definite period of time and that Wang's association with Prudential was terminable at-will by Wang and Prudential alike, with or without notice. *(Id.* at 2, 11).

In March 2004, Richard Treta, the Managing Director of Prudential's Lone Star Agency out of which Wang worked, was notified that Wang's adult son, John M. Wang, had been listed as one of two primary beneficiaries on a life insurance policy application written by Wang on behalf of a client, Charlene Weathers. *(Id.* at 1-2). Without receiving the approval of Treta or anyone in agency management, Wang listed her son as Weathers's "adopted grandson" on the policy application. (*Id.* at 2). Treta notified Prudential's Retail Compliance and Risk Management team (the "Compliance Team") that this designation potentially violated the company's compliance policies *(Id.).* The Compliance Team reviewed Weathers's policies and discovered that Wang had completed a change of ownership on a previously-issued $75,000 policy naming her son as the new policyholder and primary beneficiary. *(Id.).* The policy had originally been sold by Wang and issued to Weathers in December 2001, with John M. Wang being identified as Weathers's "adopted grandson", both on the original policy application and on the change of ownership form. (*Id.*).

Prudential investigated the matter and determined that while Wang and Weathers did in fact have a

close personal relationship, John M. Wang was neither an immediate family member of Weathers', nor was he her grandson, or even a legally adopted grandson. *(Id.* at 2-3). Treta asserts that, after interviewing Wang, it appeared to him that both applications had been completed for Wang's own personal compensation as opposed to the best interests of the client, Weathers. *(Id.* at 3). Prudential determined that, in misrepresenting the relationship of her son to the client, Wang had created a potential conflict of interest by placing herself and/or her son in a position to benefit from a client's life insurance policy. *(Id.).* Treta determined that Wang's actions were in violation of company policies, and he recommended the termination of her employment. *(Id.).* The Compliance Team accepted this recommendation and decided to terminate Wang as a Prudential agent. *(Id.).* Treta notified Wang of the termination decision on October 8, 2004. *(Id.).* Treta asserts that Wang's race, sex, and/or age played no role in her termination. *(Id.).*

Wang filed a Charge of Discrimination ("Charge") with the Equal Employment Opportunity Commission ("EEOC") on July 25, 2005. *(Id.* at 1314). On her Charge Wang checked the box for "age" discrimination, but no other, and described the particulars of her complaint as follows:

> I believe I was discriminated against because of my age, 56, in violation of the Age Discrimination in Employment Act. I have found out as of July 22, 2005, in the Asian Gazette newspaper, that a younger Prudential Financial insurance agent, Linda Wu Jordan, whom I had previously worked with, has been allowed to advertise as an automobile insurance agent. When she previ-

> ously worked with me, she did not have the license for automobile insurance but when she obtained it, she was allowed to advertise as an automobile insurance agent and I was not allowed to do so while I was employed at Prudential Financial.

(Id. at 14). Wang filed this lawsuit on October 24, 2005, bringing the following causes of action against Prudential and Treta for violations of the Age Discrimination in Employment Act of 1967 ["ADEA"]; Title VII (race discrimination, racially hostile work environment, and retaliation); 42 U.S.C. § 1981; and the Texas Labor Code and Texas Human Rights Act ["TCHRA"]; and for intentional infliction of emotional distress, negligent supervision, retention, and training, and defamation. (*See generally* Pl.'s Orig. Compl.). On November 22, 2005, Defendants filed a partial motion to dismiss Wang's claims under Rule 12(b) (6), Federal Rules of Civil Procedure. On May 25, 2006, Judge Barefoot Sanders, to whom this case was originally assigned[1], issued an order granting the motion in part, dismissing with prejudice Wang's claims against Prudential for violations of the TCHRA and for race discrimination and retaliation under Title VII. (*See* May 25, 2006 Memorandum Opinion and Order at 5). Wang's Title VII, TCHRA, and ADEA claims asserted against Treta in his individual capacity were dismissed as well. *(Id.).* Shortly after the Court issued its order, Wang filed a First Amended Complaint asserting claims for age discrimination under the ADEA and Section 21 of the Texas Labor Code, race discrimination, disparate treatment, and hostile work environment under 42 U.S.C. § 1981,

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[1] This case was transferred to this Court on July 21, 2006 pursuant to Special Order No. 3-253.

negligent supervision and retention, and defamation. (*See generally* Pl.'s First Am. Compl.). With Wang's consent, her counsel withdrew from their representation on August 29, 2006, and Wang has been proceeding *pro se* ever since. On September 15, 2006, Wang filed a Second Amended Complaint in which she asserts that Prudential wrongfully terminated her and in so doing breached a contact, breached the duty of good faith and fair dealing, and violated "her rights to be free from hostile work environment, age, sex, and/or race. Discrimination[.]" (Pl.'s Sec. Am. Compl. at p. 1).[2] Wang also alleges that Prudential has failed to pay her certain earnings, benefits, and commissions to which she claims entitlement. (*Id.*).

On September 22, 2006, Defendants filed a partial motion to dismiss under Rule 12(b)(6) seeking to dismiss all potential claims asserted against Treta in his individual capacity in this lawsuit as well as Wang's breach of the duty of good faith and fair dealing claim against Prudential on October 11, 2006, Defendants filed a motion for summary judgment seeking the dismissal of Wang's claims for breach of contract, breach of the duty of good faith and fair dealing, and all of her discrimination-based claims.

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[2] Wang fails to identify the specific statutory bases for these claims in her Second Amended Complaint. The Second Amended Complaint does, however, incorporate by reference the jurisdictional and venue averments contained in Wang's First Amended Complaint, which, in turn, reference 42 § 1981, the ADEA, and Section 21 of the Texas Labor Code. (*See* Pl.'s First Am. Compl. at 116). In the wake of Judge Sanders's May 25, 2006 order and in light of the allegations contained in Wang's Second Amended Complaint, Prudential proceeds on the assumption that Wang is asserting claims for race discrimination under § 1981, age discrimination under the ADEA, and sex discrimination under Title VII.

Prudential did not address Wang's assorted claims related to Prudential's alleged failure to pay her certain earnings and benefits. Wang never filed a response to the motion to dismiss but filed her response to the summary judgment motion on November 14, 2006. Defendants filed their summary judgment reply on November 22, 2006. Both motions are ripe for review and determination.

II. Analysis

A. Rule 12 (b) (6) Legal Standard

Motions to dismiss under Rule 12 (b) (6) are disfavored and rarely granted. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982). The Court liberally construes the complaint in the plaintiff's favor, and all pleaded facts are taken as true. *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986). Unless it appears beyond doubt that the plaintiff cannot prove any set of facts entitling it to relief, the complaint should not be dismissed. *Conley v. Gibson*, 355 U.S. 42, 45 (1957).

B. Rule 56 Summary Judgment Legal Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when the pleadings and record evidence show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Only disputes about material facts will preclude the granting of summary judgment. *Id.*

The burden is on the summary judgment movant to prove that no genuine issue of material fact exists, *Latimer v. Smithkline & French Lab.*, 919 F.2d 301, 303 (5th Cir. 1990). If the non-movant bears the burden of proof at trial, the summary judgment movant need not support its motion with evidence negating the non-movant's case. Rather, the movant may satisfy its burden by pointing to the absence of evidence to support the non-movant's case. *Id.*; *Little,* 37 F.3d at 1075.

Once the movant has met its burden, the non-movant must show that summary judgement is not appropriate. *Little,* 37 F.3d at 1075 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). "This burden is not satisfied with 'some metaphysical doubt as to material facts,' . . . by 'conclusory allegations,' . . . by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *id.* (quoting *Matsushita Elec. Indus. Co, v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The non-moving party must "come forward with 'specific facts showing that there is a *genuine issue for* trial.' *Matsushita,* 475 U.S. at 587 (emphasis in original) (quoting FED. R. CIV. P. 56(e)). To determine whether a genuine issue exists for trial, the court must view all of the evidence in the light most favorable to the nonmovant, and the evidence must be sufficient such that a reasonable jury could return a verdict for the non-movant. *Munoz v. Orr*, 200 F.3d 291, 302 (5th Cir. 2000); *Anderson*, 477 U.S. at 248.

C. Breach of Contract

The Court begins with Wang's charge that Prudential wrongfully terminated her employment with the company on October 8, 2004, in breach of the Statutory Agent Agreement in Texas, employment is at will, meaning that contracts of employment may be

terminated by either the employer or the employee "for good cause, bad cause, or no cause at all." *Montgomery County Hosp. Dist. v. Brown*, 965 S.W.2d 501, 502 (Tex. 1998); *Stiver v. Texas Instruments, Inc.*, 750 S.W.2d 843, 846 (Tex. App. — Houston [14th Dist.] 1988, no writ) ("In order to establish a cause of action for wrongful termination, an appellant must prove that he and his employer had a contract that specifically provided that the employer did not have a right to terminate his employment at will, and that the contract was in writing."). The at-will presumption is not rebutted simply because an employment contract is in writing. *Kadco Contract Design Corp. v. Kelly Servs., Inc.*, 38 F.Supp.2d 489, 494 (S.D. Tex. 1998) (citing *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572, 577 (Tex. App. — Houston Dist.] 1992, no writ)). Rather, an employment agreement must directly limit the employer's right to terminate an employee without cause in a "meaningful and special way". *See Massey v. Houston Baptist Univ.*, 902 S.W.2d 81, 83 (Tex. App. — Houston [1st Dist.] 1995, writ denied).

Far from limiting Prudential's ability to terminate Wang's employment without cause, the Statutory Agent Agreement explicitly provides that the Agreement is not "intended to create a contract of employment for any definite period of time" and that Wang's "association with the Company as a statutory employee as well as this Agreement are terminable at-will, and both the Company and you have the right to end the association at any time for any reason or no reason with or without notice." (Defs. App. at 11). The Statutory Agent Agreement thus reinforced rather than negated Wang's at-will status. Because Prudential was entitled to end Wang's employment with the company for any reason or no reason under

Texas law and the Statutory Agent Agreement, the Court finds that there exists no genuine issue of material fact with respect to Wang's breach of contract claim.

D. Duty of Good Faith and Fair Dealing

Wang also claims that, in terminating her, Prudential violated a duty of good faith and fair dealing. This claim must fail, as there is no duty of good faith and fair dealing in the employment context under Texas law. *See City of Midland v. O'Bryarit*, 18 S.W.3d 209, 216 (Tex. 2000).

E. Failure to Exhaust Administrative Remedies — ADEA and Title VII Claims

Prudential next argues that Wang is barred from bringing her age discrimination claim under the ADEA or her sex[3] discrimination claims under Title VII because she failed to exhaust her administrative remedies by including those claims in her EEOC Charge. In the Fifth Circuit, a plaintiff must exhaust administrative remedies by filing a charge of discrimination with the EEOC prior to filing a civil action. *See Donis v. Rubin*, 77 F.3d 777, 781 (5th Cir. 1995). The central purpose of the exhaustion requirement is to allow the agency to fully inquire into and attempt to resolve discrimination claims. *See Clayton v.Rumsfeld,* 106 Fed. Appx. 268, 271 (5th Cir. Aug. 4, 2004). While the resulting suit is not limited to the specific complaints contained in a Charge, the suit *is*

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[3] As Prudential correctly points out, any race-based discrimination claim asserted by Wang under Title VII was dismissed with prejudice by *Judge* Sanders in his May 25,2006 order, To the extent that Wang is asserting a race claim under 42 U.S.C. § 1981, the exhaustion requirement does not apply. *See Walker v. Thompson*, 214 F.3d 615, 625 (5th Cir. 2000).

limited by the scope of the EEOC investigation that could reasonably be expected to grow out of the initial charges of discrimination. *See Fine v. GAF Chem. Corp.*, 995 F.2d 576, 578 (5th Cir. 1993).

In the Charge filed by Wang on July 25, 2005, Wang only checked the box for age discrimination and did not check the box for any other type of discrimination. (Defs. App. 14). Wang's failure to mark certain types of discrimination in her Charge does not automatically preclude her from bringing suit on those types of discrimination. In the Fifth Circuit, "the crucial element of the charge of discrimination is the *factual* statement contained therein." *Sanchez v. Standard* Brands, *Inc.*, 431 F.2d 455, 462 (5th Cir. 1970) (emphasis in original). In her factual statement, Wang states only that she was discriminated against on the basis of her age in violation of the ADEA. The statement indicates that her age claim is premised on the fact that a younger Prudential insurance agent, Linda Wu Jordan, was allowed to advertise as an automobile agent in the Asian Gazette newspaper while she was not allowed to do so. (Defs. App. at 14). The factual statement fails to make any mention whatsoever of sex discrimination. In fact, the statement actually tends to refute the notion that Wang was discriminated against on the basis of sex (or race, for that matter), given that her complaint centers around the fact that another *Asian female* — Jordan[4] — was treated better than she was because she was younger. The Court finds that the facts alleged in Wang's Charge would not reasonably

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[4] Wang has attached copies of Jordan's advertisement in the Asian Gazette to her summary judgment materials. It is apparent from the advertisement that Jordan is a woman of Asian descent.

lead the EEOC to investigate any other form of discrimination but age discrimination. *See Anderson v. City of Dallas,* 116 Fed. Appx. 19, 24 (5th Cir. Oct. 28, 2004); *Gohe v. 7-Eleven, Inc.,* 2006 U.S. Dist. LUIS 4747, at *5-6 (N.D. Tex. Feb. 8, 2006). Because Wang failed to exhaust a claim of sex discrimination, she is barred from asserting that type of claim in this suit.

Wang's age claim presents a closer question. Prudential argues that the harm described in Wang's Charge — that a younger insurance agent was allowed to advertise as an automobile insurance agent — is far removed from a claim that she was terminated because of her age. The Court's inquiry is limited to whether Wang's complaint of age discrimination in connection with her termination is "like or related to" the allegations made in the Charge and whether an investigation into her termination claim could reasonably be expected to grow out of those allegations. Although Wang's complaint about not being allowed to advertise in an Asian publication, taken alone, may be only tenuously, if at all, connected to the circumstances surrounding her termination, Wang stated in her Charge that she believed she was discriminated against because of her age in violation of the ADEA, she checked the "age" box, and she indicated that the latest date on which the discrimination took place was October 8, 2004, the date of her termination. (Defs. App. 14). Regarding the facts alleged in the Charge as a whole, the Court finds that an investigation into whether Wang's October 8, 2004 termination was motivated in part by age discrimination could reasonably be expected to grow out of the factual allegations made in her Charge. Wang's age claim, then, is not barred for failure to exhaust.

F. Wang Has Failed to Raise a Fact Issue on Her Discrimination Claims

Prudential next argues that all of Wang's extant discrimination claims based on the ADEA (age), Title VII (sex), and § 1981[5] (race) fail on their merits, even assuming that they are properly before the Court. Because there is no evidence of direct discrimination in this case, the Court applies the modified *McDonnell Douglas* burden-shifting framework. *See Roberson v. Alltel Info. Servs.*, 373 F.3d 647, 651 (5th Cir. 2004) (stating that standard of proof for Tide VII discrimination claims also applies to ADEA and § 1981 claims). Under that scheme, a plaintiff must first establish a prima facie case of discrimination. *Rachid v. Jack in the* Box, *Inc.*, 376 F.3d 305, 312 (5th Cir. 2004). If the plaintiff meets this burden, then a burden of production shifts to the defendant to articulate a legitimate, non-discriminatory reason for its actions. *Id.* If the defendant satisfies this threshold, then the plaintiff must produce evidence sufficient to raise a fact question "(1) that the defendant's reason is not true, but is instead a pretext for discrimination (pretext alternative); or (2) the defendant's reason, while true, is only one of the reasons for its conduct, and another 'motivating factor' is the plaintiffs protected characteristic (mixed-motive[s] alternative)." *Id.*

To make out a prima fade case of discrimination, a plaintiff must establish that: 1) she is a member of a protected class; 2) she was qualified for the position

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[5] Race discrimination claims under 42 U.S.C. § 1981 are evaluated under the same analytical rubric as Title VII discrimination claims. *See Raggs v. Mississippi Power & Light Co.*, 278 F.3d 463, 468 (5th Cir. 2002); *Walker*, 214 F.3d at 625.

at issue; 3) she suffered an adverse employment action; and 4) she was replaced by someone outside the protected class or others similarly situated were treated more favorably, *See Okoye v. Univ. of Texas Houston Health Sci.* Ctr., 245 F.3d 507, 512-13 (5th Cir. 2001). Prudential contends that Wang has failed to present any competent summary judgment evidence as to the fourth element — that is, that she has failed to show either that she was replaced by someone outside of her protected class or that similarly situated persons were treated more favorably than she was.

The Court examines whether Wang has met her burden of establishing a prima facie case by looking to the substance of the materials she submitted in response to Prudential's summary judgment motion. To say the least, Wang's response brief is confusing, diffuse, disordered, and, in many ways, incoherent. Rather than limiting her response to the specific legal claims actually asserted in her live pleading, Wang takes her response brief as an occasion to catalogue a wide array of grievances she has stored against Prudential and certain of its agents/employees since her affiliation with the company. Moreover, the "exhibits" to which Wang refers at times throughout the response do not correspond to her supporting evidentiary materials. Wang has thus failed in her duty to identify specific evidence in the record and to articulate the precise manner in which that evidence supports her claims. *See Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). Although the Court is mindful of Wang's pro *se* status and her limited proficiency in the English language, "[t]here is a point at which even *pro se* litigants must become responsible for the prosecution of their own cases if their claims are to warrant the court's attention."

Bookman v. *Shubzda*, 945 F.Supp. 999, 1002 (N.D. Tex. 1996). The quality of Wang's evidentiary materials is also wanting. Wang has failed to even offer her own affidavit to support her claims, and the unsworn and unauthenticated documents that she did submit do not constitute competent summary judgment evidence. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (even pro *se* plaintiffs cannot rely on unsworn pleadings and unauthenticated documents to defeat summary judgment); *Baker v. Norman*, 651 F.2d 1107, 1123 (5th Cir. 1981).

In short, Wang has failed to present any admissible summary judgment evidence showing that she was replaced by someone outside her protected class or that those similarly situated to her were treated more favorably. Accordingly, she cannot make out a prima facie case of age, sex, or race discrimination. And even if she had, Prudential has proffered a legitimate, non-discriminatory reason for terminating her — namely, that she had misrepresentated a beneficiary's relationship to an insured client in violation of company policies. Wang appears to argue that Prudential's asserted justification is false because the Defendants were aware of the close relationship between her family and Weathers. (Pl. Resp. Brief at 29). The Court notes that Wang has submitted declarations from Weathers in which Weathers states that she "has accepted Judy and John Wang as a part of our family" and that John Wang "is the policy owner of that one insurance policy [.]" (*See* App. in Supp. Pl.'s Resp. at Tab B, at 1-4). This evidence, even if accepted, is insufficient to show that Prudential's reason for terminating Wang is a pretext for prohibited discrimination. After all, Prudential acknowledges the close relationship between the Wang family and Weathers. (Defs. App. at 3). Prudential

asserts that its decision to terminate Wang, however, was based on the fact that Wang violated company policies by: designating her son as Weathers's "adopted grandson" on Weathers's insurance application when, legally, he was not, failing to seek prior approval for making that designation; and creating an apparent conflict of interest by virtue of the designation. (Defs. App. at 2-3). Wang has thus failed to point to any admissible evidence that challenges the veracity of this assertion or which shows that prohibited discrimination played a part in the termination decision even if Prudential's asserted justification is true. *See Rachid,* 376 F.3d at 312. Prudential is thus entitled to summary, judgment on Wang's remaining discrimination claims.[6]

G. Wang's Claims Against Defendant Treta Should be Dismissed

The Court next turns to Defendants' argument that Plaintiff's Second Amended Complaint fails to state a cause of action against Defendant Treta. Judge Sanders had earlier dismissed with prejudice any claims against Treta in his individual capacity under the ADEA, Title VII, and the TCHRA. While Plaintiff's Second Amended Complaint, filed after *Judge* Sanders's ruling, continues to include Treta in the caption to that complaint, the body of the complaint itself fails to identify Treta even once. Wang has thus provided no basis upon which to hold Treta individually liable for her claims in this case, and the Court finds that all claims against Treta in his individual capacity should he dismissed as a matter of law.

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[6] The Court notes that Wang has failed also failed to produce any sort of admissible evidence which would support a hostile work environment claim.

H. Wang's Remaining Compensation-Based Claims

The Court observes that Prudential has not moved for summary judgment on or to dismiss Wang's claims concerning Prudential's alleged failure to pay her certain earnings, benefits, and commissions to which she allegedly became entitled during her tenure with the company. Given that these claims are all that remain pending in this case, the Court orders the parties to file a written joint report, within 10 days of the date of this order, regarding the status of those claims. The report shall contain a statement by Wang as to whether she intends to pursue such claims and, if so, a statement by Prudential as to whether it intends to file a dispositive motion as to those claims prior to trial.

III. Conclusion

For the reasons stated above, the Court GRANTS Defendant's motion for summary judgment (doc. 68) and motion for partial dismissal (doc. 67). Wang's claims against Prudential for breach of contract, breach of the duty of good faith and fair dealing, and for hostile work environment, age, sex, and/or race discrimination under the ADEA, Title VII, and 42 U.S.C. § 1981, respectively, are DISMISSED with prejudice. Wang's remaining claims asserted against Defendant Treta in his individual capacity are also DISMISSED with prejudice. As noted in Section II.H. above, the parties are ORDERED to provide a joint written report within 10 days of the date of this order regarding the status of Wang's remaining claims in connection with Prudential's alleged failure to properly compensate Wang.

SO ORDERED.

/s/ Jane J. Boyle
United States District Judge
Signed December 13th, 2006

APPENDIX C

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3:05-CV-2091

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a PRUDENTIAL INSURANCE COMPANY, AND RICHARD TRETA,

Defendants.

MEMORANDUM ORDER

Before the Court is Defendants' Motion for Summary Judgment on Plaintiffs Remaining Claims (doc. 114). The Court GRANTS the motion for the reasons explained below.

I. Background

The facts of this case were set forth at length in this Court's December 13, 2006 Memorandum Order and need not be repeated here. In that order the Court dismissed with prejudice Wang's claims against Prudential for breach of contract, breach of the duty of good faith and fair dealing, and for hostile work environment, age, sex, and/or race discrimination under the ADEA, Title VII, and 42 U.S.C. § 1981. The Court observed in the order that Prudential did not move for summary judgment with respect to what the Court construed as Wang's claims against Pru-

dential for allegedly failing to pay her certain earnings, benefits, commissions, and reimbursements to which she became entitled during her tenure with the company.

At the time the Court believed that these compensation-based claims were unrelated to the discrimination-based claims Later, on January 5, 2007, the Court ordered Wang to file a one-page statement setting forth specific facts supporting her compensation-based claims. Wang filed her statement on January 12, 2007. Roughly speaking, Wang identified the following complaints:

1. Non-payment of fees associated with "Wang's prior authorized attending of Series 7 class and exam";
2. Non-payment of fees associated with obtaining "[t]he prior authorized Property/Casualty (Auto/Home) licenses";
3. Failure to reimburse Wang for "[t]he usual PRU authorized expenditures";
4. Certain "unearned commissions";
5. Failing to pay Wang for certain "authorized work" that she performed with Attorney Weddell Barnett;
6. Failure to pay Wang for accrued stock options
7. Failure to "register Wang's qualification" for lost series 65 exam

(Pl.'s January 12, 2007 One-Page Statement). Wang clarified at her deposition taken on January 16, 2007 that her remaining claims are premised on race, sex, and/or age discrimination. She testified as follows:

Q: Is it your contention that you were not paid the items listed [on Wang's January 12, 2007 one-page statement] because of some form of discrimination?

A: Yes.

Q: Okay. And what type of discrimination are you claiming caused you not to be paid these items? Are you claiming that that was because of your sex or gender?

A: I don't know what you really want because you're going to say, well, this does not qualify. The intention is based on race, sex, age, hostile, everything. It was a terrible working environment, and it is way low, low, low quality working environment. The staff treat you as a second class citizen.

Q: Okay. So just so I'm clear, you're claiming that you were not paid these items that are listed on the second page of Exhibit 2 because of race discrimination, sex discrimination, age discrimination, and as a result of a hostile environment?

A: And

Q: Is that a yes?

A: Yes. And they just don't want to pay me. They don't pay attention to me, and they just don't like me. It's completely different from my new job. Everybody love me. It's just a terrible, terrible, working environment. I can cry the rest of my life.

(Def. App. 51). Although Wang fails to identify the statutory bases for these discrimination claims, Prudential assumes that they are being brought pursu-

ant to Title VII, § 1981, and/or the ADEA. On February 27, 2007, Prudential filed a supplemental motion for summary judgment seeking the dismissal of Wang's remaining claims in this case. That motion is now ripe for adjudication.

III. Analysis

A. Summary Judgment Legal Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when the pleadings and record evidence show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Only disputes about material facts will preclude the granting of summary judgment. *Id.*

The burden is on the summary judgment movant to prove that no genuine issue of material fact exists. *Latimer v. Smithkline & French Lab.*, 919 F.2d 301, 303 (5th Cir. 1990). If the non-movant bears the burden of proof at trial, the summary judgment movant need not support its motion with evidence negating the non-movant's case. Rather, the movant may satisfy its burden by pointing to the absence of evidence to support the non-movant's case. *Id.; Little,* 37 F.3d at 1075.

Once the movant has met its burden, the non-movant must show that summary judgment is not appropriate. *Little,* 37 F.3d at 1075 (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986)). "This burden is not satisfied with 'some metaphysical doubt as to material facts,' . . . by 'conclusory allegations,' . . .

by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The non-moving party must "come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Matsushita,* 475 U.S. at 587 (emphasis in original) (quoting FED. R. CIV. P. 56(e)). To determine whether a genuine issue exists for trial, the court must view all of the evidence in the light most favorable to the non-movant, and the evidence must be sufficient such that a reasonable jury could return a verdict for the non-movant. *Munoz v. Orr*, 200 F.3d 291, 302 (5th Cir. 2000); *Anderson*, 477 U.S. at 248.

B. Failure to File a Charge Within 300 Days of Discriminatory Act

Prudential first argues that any compensation-based claims Wang is bringing pursuant to Title VII and the ADEA should be dismissed because Wang failed to timely file a charge of discrimination with respect to such claims. To support a claim for relief under Title VII or the ADEA, a plaintiff must file a charge of discrimination within 300 days of the alleged discriminatory action. 42 U.S.C. § 2000e-5(e) (Title VII); 29 U.S.C.§ 626(d)(2) (ADEA); *Tillison v. Trinity Valley Elec. Co-op., Inc.*, 204 Fed. Appx. 346, 348 (5th Cir. Oct. 23, 2006). Wang filed her charge of discrimination on July 25, 2005. She is thus barred from complaining about any actions that occurred prior to September 28, 2004, 300 days before July 25, 2005. Virtually all of the actions of which Wang is complaining occurred prior to September 28, 2004. The only discernible action that clearly occurred after this date was the cancellation of Wang's stock options

upon her termination on October 8, 2004.[1] Accordingly, the Court finds that all of Wang's Title VII and ADEA claims arising out of actions which took place prior to September 28, 2004 are untimely and must be dismissed.

C. Failure to Exhaust Administrative Remedies

Prudential next argues that Wang is barred from bringing compensation-based age, race, or sex discrimination claims under Title VII or the ADEA because she failed to exhaust her administrative remedies by including those claims in her EEOC Charge. In the Fifth Circuit, a plaintiff must exhaust remedies by filing a charge of discrimination with the EEOC prior to filing a civil action. *See Dollis v. Rubin,* 77 F.3d 777, 781 (5th Cir. 1995). The central purpose of the exhaustion requirement is to allow the agency to fully inquire into and attempt to resolve discrimination claims. *See Clayton v. Rumsfeld,* 106 Fed. Appx. 268, 271 (5th Cir. Aug. 4, 2004). While the resulting suit is not limited to the specific complaints contained in a Charge, the suit is limited by the scope of the EEOC investigation that could reasonably be expected to grow out of the initial charges of discrimination. *See Fine v. GAF Chem. Corp.,* 995 F.2d 576, 578 (5th Cir. 1993). In the Charge filed by Wang on July 25, 2005, Wang only checked the box for age discrimination but not for any other type of discrimination. In the Fifth Circuit,

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[1] Prudential has established under the terms of Prudential's stock options program that employees terminated for cause are not allowed to exercise stock options after the date of their termination. (Def. App. 7). Because Wang was terminated for cause — for falsifying information on a client's insurance application — Wang was not entitled to exercise her options. (*Id.*).

"the crucial element of a charge of discrimination is the *factual* statement contained therein." *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 462 (5th Cir. 1970) (emphasis in original). In her factual statement, Wang states only that she was discriminated against on the basis of her age in violation of the ADEA. The statement indicates that her age claim is premised on the fact that a younger Prudential insurance agent was allowed to advertise as an automobile agent in the Asian Gazette newspaper while she was not allowed to do so. The Court finds that no claim of any type of discrimination arising from a failure to properly compensate or reimburse Wang could reasonably be expected to grow from Wang's EEOC Charge. Accordingly, Wang's remaining claims under Title VII and/or the ADEA should be dismissed on the additional ground that she failed to exhaust administrative remedies with respect to those claims.

D. Wang Has Failed to Raise a Fact Issue on Her Compensation-Based Claims

To the extent that any of Plaintiffs compensation-based claims remain, the Court finds that Wang has failed to offer competent summary judgment evidence showing that Prudential treated her any differently than other similarly situated employees outside of her protected class with respect to its compensation and reimbursement policies. Thus, Wang has failed to establish even a prima facie case of discrimination. *See Okoye v. Univ. of Texas Houston Health Sci. Ctr.*, 245 F.3 d 507, 512-13 (5th Cir. 2001). Nor has Wang presented competent summary judgment evidence raising a fact issue as to whether Prudential's legitimate non-discriminatory reasons for making its compensation-related decisions were merely a pretext for

unlawful discrimination or that Wang's protected characteristics were a motivating factor in making those decisions. *See Rachid v. Jack in the Box, Inc.*, 376 F.3d 305, 312 (5th Cir. 2004). For these additional reasons, Prudential is entitled to summary judgment on Wang's remaining claims.

III. Conclusion

For the reasons stated above, the Court GRANTS Defendant's Motion for Summary Judgment on Plaintiffs Remaining Claims (doc. 114). Wang's claims against Prudential for failing to properly compensate and/or reimburse her based on race, sex, and/or age discrimination are accordingly DISMISSED with prejudice.

SO ORDERED.

April 20th, 2007

/s/ Jane J. Boyle
JANE J. BOYLE
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3:05-CV-2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a PRUDENTIAL INSURANCE COMPANY, AND RICHARD TRETA,

Defendants.

ORDER

Before the Court is Plaintiffs Motion to Amend Her Pleadings (doc. 59). Defendants do not oppose the motion. Accordingly, the motion is GRANTED. Plaintiff is ORDERED to electronically file her Second Amended Complaint within three days of the date of this order.

SO ORDERED.

SIGNED September 13, 2006

/s/ Jane J. Boyle
JANE J. BOYLE
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3: 05-CV-2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a PRUDENTIAL INSURANCE COMPANY, AND RICHARD TRETA,

Defendants.

ORDER

Before the Court is Plaintiffs motion for an extension of time to file a response to the Defendants' motion for summary judgment (doc. 78)[1]. Plaintiff seeks a one-week extension. The Court GRANTS the motion Plaintiff shall file her response to Defendants' summary judgment motion and all supporting evidence on or before November 13, 2006.

SO ORDERED.

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[1] It appears as though Plaintiff filed an identical motion for an extension on October 31, 2006 (doc. 74), which is unsigned. The Clerk is directed to strike the October 31 motion from the docket. Also on October 31, Plaintiff filed a "Motion to Response to the Defendants' Summary Judgment (doc. 76). This document appears to be a version of Plaintiffs response to Defendants' summary judgment motion, as opposed to a motion in its own right. The Clerk is therefore directed to make the appropriate correction to the docket sheet.

SIGNED November 2, 2006

/s/ Jane J. Boyle
JANE J. BOYLE
United States District Judge

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed 5/14/2008]

No. 07-10534

JUDY WANG,
Plaintiff - Appellant

v.

PRUDENTIAL FINANCIAL CORPORATION; PRUDENTIAL INSURANCE COMPANY OF AMERICA, doing business as Prudential Insurance Company; RICHARD TRETA
Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas, Dallas

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ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 2/26/08, 5 Cir., _____, _____, F.3d _____

Before HIGGINBOTHAM, STEWART and ELROD, *Circuit Judges.*

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5th CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5th CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en bane, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/
United States Circuit Judge

APPENDIX G

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Civil Action No. 3:05-CV-2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a PRUDENTIAL INSURANCE COMPANY, AND RICHARD TRETA,

Defendants.

ORDER

The Court DENIES Plaintiff's Motion for Reconsideration (doc. 88) of this Court's December 13, 2006 Memorandum Order granting the Defendants' motion for summary judgment and motion for partial dismissal.

SO ORDERED.

SIGNED January 5, 2007.

/s/ Jane J. Boyle
JANE J. BOYLE
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:05-CV-2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORP., PRUDENTIAL INSURANCE COMPANY OF AMERICA d/b/a Prudential Insurance Company, AND RICHARD TRETA,

Defendants.

FINAL JUDGMENT

In accordance with the Court's memorandum orders of December 13, 2006 and April 20, 2007 granting Defendants Prudential Financial Corp., Prudential Insurance Company of America d/b/a Prudential Insurance Company and Richard Treta's Rule 12(b)(6) Partial Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted, Motion for Summary Judgment, and Motion for Summary Judgment on Plaintiffs Remaining Claims, it is ORDERED, ADJUDGED, and DECREED that Plaintiff Judy Wang take nothing on her claims against Defendants Prudential Financial Corp., Prudential Insurance Company of America d/b/a Prudential Insurance Company, and Richard Treta's and that all of Plaintiffs claims be, and they are hereby, DISMISSED with prejudice. Costs shall be assessed

against Plaintiff in accordance with Rule 54(d), Federal Rules of Civil Procedure.

SO ORDERED.

SIGNED April 20, 2007

/s/ Jane J. Boyle
JANE J. BOYLE
United States District Judge

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed SEP 15, 2006]

Civil Action No. 3-5CV2091-B

JUDY WANG,

Plaintiff,

v.

PRUDENTIAL FINANCIAL CORPORATION, PRUDENTIAL INSURANCE COMPANY OF AMERICA, d/b/a PRUDENTIAL INSURANCE COMPANY and RICHARD TRETA,

Defendants.

PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Judy Wang, Plaintiff, pro se, and makes and with leave of Court first requested and obtained, makes and files this her Second Amended Complaint herein and would show the Court therefor as follows:

I.

This Court has jurisdiction and venue by pleadings already on file herein, and Plaintiff adopts her pleadings regarding jurisdiction herein already made and incorporates them herein by reference.

II.

Plaintiff was employed by Prudential Financial Corp., Prudential Insurance Company of America

d/b/a Prudential Insurance Company from September 13, 1999, as a common law employee and was promoted from a "Common Law employee" to a full time "Statutory Agent"/"Statutory Employee" (for which Plaintiff was duly licensed, registered, appointed and approved by Defendant) by written contract between the parties effective on December 29, 2003, and was thereafter wrongfully terminated from her said employment by Defendant on October 8, 2004, to Plaintiffs damage, further Defendant's action in terminating Plaintiff not only was a breach of her contract to Plaintiff's damage but was also done in violation of good faith and fair dealing and in a malicious manner with apparent intent to humiliate and embarrass Plaintiff, wrongfully taking Plaintiffs valuable personal property to Plaintiff's damage, and in violation of her rights to be free from hostile working environment, age, sex, and/or race discrimination, for which Plaintiff also seeks exemplary damages against Defendant, further Defendant has failed and refused to pay Plaintiff her earnings, entitlements, benefits, commissions, stock options, 401K 4% contribution plan, health, dental and life insurance, and education assistant program, continuing, new and review business commissions, loss of pending potential, million-dollar insurance contracts;, annuities, "401K roll-over" business, and earned bonuses, and home, life, property and casualty, "group benefit program and ESOP benefit project and 1200 business leads and 2-weeks of pending appointments, to which Plaintiff is and was then rightly and justly entitled to the benefit from, all to Plaintiff's damage (actual, reasonably anticipated and also emotional) and damage of mental distress, all in a sum in excess of the minimum jurisdictional amount herein, for which she seeks damages against Defendant.

III.

After said termination Plaintiff continued her education and study at her own expense and received the certification/designation as, and now is, a Chartered Financial Consultant (ChFC).

IV.

This suit has been filed, after Defendant's internal remedy procedure, within the 180 day period provided for in Uniform Employment Termination Act

WHEREFORE, premises considered Plaintiff prays that upon final hearing herein she have judgment against Defendant for her actual damages in a sum exceeding the minimum jurisdictional amount, and for exemplary damages and for interest thereon at the lawful legal rate, for her costs of Court and her attorneys fees previously required herein in the sum of $10,000.00, and that she be reinstated (including her now obtained through post-termination education and study) as a Chartered Financial Consultant (ChFC) as an employee of Defendant, together with her benefits and salary, commission, bonus, and other entitlements and stock options to which she may show herself justly entitled, and for general relief.

Respectfully submit,

_____/s/_____
Judy Wang, Plaintiff pro se
P.O. Box 15632,
Fort Worth, TX 76119
Ph. 817- 475-4783

A copy of the above and foregoing pleading, Plaintiffs Second Amended Complaint, was hand-delivered or sent by U.S. Mail postage prepaid to the attorney of

Record for Defendant this 8th day of September, 2006, addressed to:

Thomas E. Reddin, Attorney at Law
1201 Elm Street, #1700 Renaissance Tower
Dallas, Texas, a75270

_____/s/_____
Judy Wang Plaintiff, pro se

APPENDIX J

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

[Filed 9/8/2006]

Civil Action No. 3-05CV2091-B

JUDY WANG,

Plaintiff,

vs.

PRUDENTIAL FINANCIAL CORPORATION, PRUDENTIAL INSURANCE COMPANY OF AMERICA, d/b/a PRUDENTIAL INSURANCE COMPANY and RICHARD TRETA,

Defendants.

PLAINTIFF'S MOTION TO AMEND HER PLEADINGS

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Judy Wang, Plaintiff, pro se, and makes and files this her Motion to Amend her Pleading herein and would show the Court therefor as follows:

I.

Plaintiff's attorney herein, Raul H. Loya, filed Plaintiff's original petition and an amended Petition herein, but failed to properly state Plaintiff's full complaint, and said attorney has withdrawn from this case and no longer represents this Plaintiff. Plaintiff has reviewed the pleadings on file for her in this case and finds that it is necessary and desirable

to amend her original complaint herein and attaches thereto her "Second Amended Complaint", which she now seeks permission of the Court to file

II.

This Motion is not made merely to delay this case but in order that justice may be done and that Plaintiff's case and cause of action be properly stated for the Court and considered. The Scheduling Order herein dated February 17, 2006, provides that this Motion may be filed by September 8, 2006, and today is September 8, 2006, thus this Motion is timely filed and will not delay this case. Said "Scheduling Order" further provides that all discovery is to be completed by January 16, 2007, thus Defendant and Plaintiff have sufficient time within the time scheduled to complete their discovery, and will not be delayed by allowing Plaintiff to file her said Second Amended Complaint herein.

WHEREFORE, premises considered Plaintiff respectfully moves the Court to grant this her Motion to amend her pleading herein and to file her "Second Amended Complaint" which is attached hereto.

Respectfully submitted,
_____/s/_____
Judy Wang, Plaintiff, pro se
P.O. Box 15632
Fort Worth, TX.76119

A copy of the above and foregoing pleading was hand-delivered or sent by U.S. Mail postage paid to the attorney of Record for Defendant this 8th day of September, 2006, addressed to:

Thomas E. Reddin, Attorney at Law
1201 Elm Street, #1700 Renaissance Tower
Dallas, Texas, a75270

_____/s/_____
Judy Wang, Plaintiff, pro se

I certify that I have conferred by telephone on Sept ember 7, 2006 on this motion, with Counsel for Defendant, Thomas E. Reddin, on this matter and that said Thomas e. Reddin, objects to this motion.

_____/s/_____
Judy Wang, Plaintiff, pro se

APPENDIX K

IN THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed 11/1/2006]

Civil Action No. 3-5CV2091-B

JUDY WANG,

Plaintiff,

vs.

PRUDENTIAL FINANCIAL CORPORATION, PRUDENTIAL INSURANCE COMPANY OF AMERICA, d/b/a PRUDENTIAL. INSURANCE COMPANY and RICHARD GRETA,

Defendants.

PLAINTIFF'S MOTION TO EXTEND OF TIME FOR A WEEK TO FILE A RESPONSE TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN OPPOSITION (LR 7.3)

TO THE HONORABLE JANE J. BOYLE UNITED STATES DISTRICT JUDGE

COMES NOW, the plaintiff, Judy Wang files this her Plaintiff's motion to extend the filing time for a week to response to the Defendant's Summary Judgment and Brief in Opposition on October 11, 2006 and would show the Court the following:

Defendants' motion FOR Summary Judgment was filed far away from 90 DAYS OF THE TRIAL SETTING which is April, 2007. There is plenty of

time for the completion of the Discovery findings. (LR 56.2(a). PLAINTIFF IS NOT IN THE LEGAL PROFESSION AND REQURES EXTRA TIME FOR THE LEGAL SEARCH.

List of Expert witnesses is due on 10/31/2006 which is the same date for this reply.

ENGLISH AS SECOND LANGUAGE THAT THE PLAINTIFF REQURES ADDITIONAL TIME FOR REASONABLE ACCOMMODATION AS THE PLAINTIFF TAKES THE LICNESES EXAMINATIONS DUE TO ESL SPECIAL ACCOMMODATION.

Plaintiff's legal coach, Joe Orr, attorney at law, his son is getting married on Nov. 3rd 2006, which is a few days away.

EEOC has lost Plaintiff's files and is still looking for which should include the letter sent by Plaintiff to the Director Michael Fezel on 81312005 (Exhibit A, which date was 10 days after the Plaintiff obtained the first "Right to Suit Letter which was Issued at the same time and delievered in person not by mall), the minutes with Director Fetzer and Investigator, Azella L. Dykman, at Dallas District Office, 207 S. Houston St. 3rd Floor, Dallas, TX 75202 after presenting the letter in person. The contents included the charges of Sexual Harassment, Race, Age, and Compensation Discrimination, also Hostile working Environment, etc. Plaintiff did not receive a "New Determination Letter" after the new additional charges. Plaintiff was also counseled by the other counselor after 7/25/2005 and and was told that there was no need for the second "Right to Suit letter" for the Race/Color and Compensation Discrimination, etc. One letter would be enough.

"A Charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter. The original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred." §1601.12 Contents of charge; amendment of charge.

> Code of Federal Regulations Title 29: Labor PART 1601—PROCEDURAL REGULATIONS. Plaintiff had demonstrated the fully exhausted the Administrative Remedies and filed the claims of Sexual Harassment, Race, Age, and Compensation Discrimination, also Hostile working Environment, etc. after the new additional charges to be appealed and be amended.

(Exhibit B)

There is lack of communication between PLAINTIFF AND FORMER LEGAL COUNSEL, RAWL LOYA WHO IS STILL WITHHOLDING SOME OF THE PLAINTIFF'S ORIGINAL DOCUMENTS OF EVIDENCE. AT THE TIME OF LOYA'S WITHDRAW, PLAIN line WAS NOT AWARE THE OTHER PAPERS AND ONLY READ THE LAST TWO PAGES PRIOR PLAINTIFF'S SIGNATURE. Plaintiff was not aware of time limitations of legal process.

DEFENDANTS' PRODUCED THE FIRST SET OF PRODUCTION ON OCTOBER 11, 2006 THAT PLAIN-TIFF DID NOT HAVE ADQUATE TIME FOR THE INSPECTION OF DOCUMENTS AND REPONSE.

DEFENDANTS STILL FAILED TO PRODUCE "EMPLOYEE HANDBOOK" AND "TERMINATION PROCEDURE" ALONG WITH THE OTHER IMPORTANT POSESSIONS AS EVIDENCE,

Respectfully submitted
_____/s/_____
Judy Wang, ChFC
P.O. Box 15632,
Fort Worth, TX 76119
PLAINTIFF, pro se

CERTIFICATE OF SERVICE

A copy of the above motion was delivered by UPS. Mail postage paid to the attorney of record for Defendants addressed: Thomas E. Reddin, GODWIN PAPPAS LANGLEY RONQUILLO, LLP, 1700